

LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement") entered into this _____ day of _____, 2010, between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, acting by and through the ECONOMIC DEVELOPMENT DEPARTMENT**, a Kentucky consolidated local government, having a mailing address of 444 South Fifth Street, Suite 600, Louisville, Kentucky 40202 ("Metro"), and **HERTZ INVESTMENT GROUP, LLC**, a Delaware limited liability company, with its principal address at 1522 2nd Street, Santa Monica, CA 90401, as property manager for **HERTZ STARKS BUILDING, LLC** a Delaware limited liability company, with its principal office located at 455 S. Fourth Street, Louisville, KY 40202 ("Borrower").

WITNESSETH:

WHEREAS, Metro desires to promote the redevelopment and revitalization of Fourth Street in the downtown area as an area offering diverse entertainment opportunities to citizens of and visitors to Louisville; and

WHEREAS, in order to encourage and facilitate the redevelopment of Fourth Street as an entertainment district, Metro has established a forgivable loan fund program known as the Fourth Street Entertainment District Forgivable Loan Program ("Loan Program") for the purpose of assisting businesses and persons with the startup costs for new entertainment businesses locating on Fourth Street; and

WHEREAS, Borrower owns the Starks Building located at 455 S. Fourth Street ("Starks Building") and proposes to renovate space on the first floor of the Starks Building ("Leased Space") and lease the Leased Space to a high-end restaurant ("Restaurant"); and

WHEREAS, Borrower has requested Metro to make a Forgivable Loan to Borrower to enable it to make the necessary improvements to the Leased Space to make it suitable for lease to the Restaurant; and

WHEREAS, Metro has determined that the location of the Restaurant in the Leased Space will assist with the redevelopment of Fourth Street as an entertainment district and that therefore it is in the best interests of Metro to make the Loan to Borrower in accordance with the terms and conditions of this Loan Agreement ("Loan"); and

WHEREAS, Metro has determined that Borrower would not be able to renovate the Leased Space for the Restaurant but for the making of the Loan and therefore in order to induce Borrower to undertake such project, Metro agrees to make the Loan to Borrower; and

WHEREAS, the making of the Loan as provided herein is in furtherance of the public purposes of Metro in that it will increase the tax base of the city, create jobs for the citizens of Metro and assist the redevelopment and revitalization of Fourth Street;

NOW, THEREFORE, in consideration of Metro's agreement to make a loan to Borrower in the amount of **THREE HUNDRED THOUSAND DOLLARS (\$300,000.00)** and subject to the following terms and conditions, the parties hereto agree and covenant as follows:

I. LOAN TERMS. Metro agrees to make a loan to Borrower upon the following terms and conditions:

A. Loan Amount. Subject to the provisions of this Agreement, Metro will make and Borrower will accept a loan in the amount of \$300,000.00.

B. Use of Loan Proceeds. The Loan proceeds shall be used by Borrower solely to renovate, equip and finish the Leased Space to a level that it can be leased to the Restaurant.

C. Closing. The closing on the Loan shall be no later than April 1, 2010, and shall be held at 444 S. Fifth Street, Suite 600, Louisville, Kentucky ("Closing").

D. Term. The Loan shall be for a term of five (5) years commencing on the date of the Closing and terminating on the date five (5) years from the date of Closing.

E. Interest. During the term of the Loan no interest shall accrue on the principal amount of the Loan, except as otherwise provided in subsection H. of this Section.

F. Payment. The proceeds of the Loan shall be paid in a lump sum at the Closing.

G. Forgiveness of Loan. Provided that the Restaurant is open for business no later than March 1, 2011 ("Opening Date"), and remains continuously open for business throughout the term of the Loan, the entire principal amount of the Loan shall be forgiven in its entirety by Metro and Borrower shall have no obligation to repay the Loan to Metro. If the Restaurant fails to open by the Opening Date, ceases to continuously operate for a period of five years from the Opening Date and Borrower does not secure a new tenant for the Leased Space which is comparable to the Restaurant within 180 days of the Restaurant ceasing to operate, Borrower shall be in default under this Agreement and shall be obligated to repay the Loan to Metro as provided in subsection H of this Section. Borrower shall not be considered to be in breach of this Agreement if the Restaurant fails to open by the Opening Date or ceases to be open for business due to strikes, lockouts, act of God, fire, flood, embargo or labor disputes provided that Metro is satisfied that the Borrower and the Restaurant are making their best efforts to open or reopen the Restaurant as quickly as possible after the occurrence of the event that caused the Restaurant to cease being open or fail to open by the Opening Date.

H. Repayment. If the Borrower is in breach of subsection G of this Section, Borrower agrees to repay the Loan in accordance with the following schedule:

<u>Date of Breach</u>	<u>Amount of Repayment</u>
Prior to the end of the First Year	\$ 300,000
Between First and Second Years	\$ 240,000
Between Second and Third Years	\$ 180,000
Between Third and Fourth Years	\$ 120,000
Between Fourth and Fifth Years	\$ 60,000
After Fifth Year	-0-

Any amount of repayment of the Loan pursuant to this section shall be due and payable within thirty (30) days after the date of the breach of subsection G of this Section, and if not paid by that date, such unpaid amount shall bear interest at a rate equal to the prime interest rate until payment is received by Metro. As used herein, "Prime Interest Rate" shall mean the prevailing prime interest rate as published in the *Wall Street Journal*. Such rate is variable and will be adjusted as it changes.

I. Loan Documents. The Loan Documents shall consist of this Agreement, a Note substantially in the form attached hereto as Exhibit A, and the Guaranty substantially in the form attached hereto as Exhibit B.

J. Loan Assumption. The Loan may not be assumed unless Borrower first obtains written consent from Metro, and such consent shall not be unreasonably withheld.

K. Change in Ownership. In the event there is a change in ownership of Borrower, Borrower shall immediately notify Metro of such change.

II. CONDITIONS PRECEDENT TO CLOSING. The parties to this Agreement acknowledge that Metro shall not be required to disburse the loan proceeds unless it has received in satisfactory form all of the following:

A. Insurance: Borrower shall have obtained or caused its contractor to obtain and furnish to Metro such insurance as the Louisville/Jefferson County Metro Government, Office of Risk Management, may reasonably require in coverage, amounts, and with insurers acceptable to Metro, including but not limited to:

- (1) Original Builders Risk Insurance Policy in an amount equal to the contract amount and acceptable to Metro, and prohibiting cancellation without thirty (30) days' prior written notice to Metro.
- (2) Contractor's Public Liability Insurance for injury to person, including death, and property damage insurance, including loss of

use thereof, in an amount equal to \$1,000,000 and listing Metro as additional insured.

- (3) Workers' Compensation Coverage in the amount required by statute.
 - (4) Comprehensive General Public Liability Insurance in an amount equal to \$1,000,000 covering Borrower against claims for bodily injury, death or property damage occurring on, in or about the Leased Space and listing Metro as additional insured.
- B. **Lease.** A copy of the lease with the Restaurant for the Leased Space, which lease shall be for a term of no less than five (5) years.
- C. **Loan Documents.** The Loan Documents, as set forth in subsection K of this Section, executed by an authorized representative of Borrower and Guarantor.
- D. **Satisfaction of Lease Contingencies.** Written evidence that all contingencies in the Lease that would permit either Borrower or Tenant to terminate the Lease have been satisfied or waived.

III. BORROWER'S COVENANTS, WARRANTIES, AND REPRESENTATIONS. In order to induce Metro to enter into this Loan Agreement and to make the Loan, Borrower makes the following representations, warranties and covenants as of the date hereof, which representations, warranties and covenants shall survive the disbursement of Loan proceeds hereunder:

A. **Control of Property.** Borrower owns the Starks Building and has the authority to lease the Leased Space to the Restaurant.

B. **Licenses and Permits.** Borrower shall obtain, at its sole expense, and at all times during the term of the Loan maintain in full force and effect all licenses and permits necessary or appropriate for all of its business activities at the Leased Space, including, but not limited to, all building and other permits for the renovation and fit out of the Leased Space.

C. **Legal Capacity.** Borrower has the legal capacity, power and right to execute and deliver the Loan Documents and to observe and perform all of the provisions of such documents to which it is a party.

D. **No Violation of Laws.** Borrower's execution and delivery of the Loan Documents, any other related documents and the performance or observance of Borrower of the provisions of any of such documents does not violate or will not violate any existing provision in any law applicable to Borrower, or otherwise constitute a default or violation under any existing contract or other obligation binding upon Borrower, or any

of Borrower's property with or without the passage of time or the giving of notice or both.

- E. **Legally Binding.** The Loan Documents are legally binding upon Borrower and are enforceable in accordance with their respective terms.

- F. **Renovation of Leased Space.** Borrower shall proceed with the renovation of the Leased Space in good faith and with reasonable diligence so that the Leased Space will be completed and ready for the occupancy by the Restaurant (including receipt of an unqualified Certificate of Occupancy and other governmental requirements and licenses needed for the operation thereof) not later than the Opening Date, and shall further use reasonable efforts to cause all work in the Leased Space to be constructed in a good and workmanlike manner, free of all liens except as provided for hereunder, and in all respects in compliance with all applicable statutes, laws, codes, ordinances, rules, permits, requirements and regulations of any governmental agency or authority having or exercising jurisdiction over the Project or the Leased Space.

- G. **Labor Goals.** Borrower shall make commercially reasonable efforts to include the participation of at least 15% minority-owned businesses and 5% women-owned businesses in the renovation of the Leased Space (including the procurement of materials). In addition, Borrower shall make good faith efforts to meet the goal of reserving up to 75% of the construction jobs available in connection with the renovation of the Leased Space for participation by Kentucky and Indiana residents, including good faith efforts to meet the goal of reserving at least 60% of such total available construction jobs for residents of the Metro Louisville Standard Metropolitan Statistical Area. It is expressly acknowledged and agreed between the parties that failure by Borrower to meet these Labor Goals shall not constitute a default under this Agreement.

IV. **EVENTS OF DEFAULT; REMEDIES.**

A. **Events of Default.** In addition to the breach pursuant to subsection I. J. and the remedy therefor set forth in subsection I.H, the following shall constitute Events of Default hereunder:

- (1) If any representation or warranty made under the Loan Documents, or in any certificate or statement furnished or made to Metro by Borrower pursuant hereto or in connection herewith or with the Loan hereunder, shall prove to be untrue or inaccurate in any

material respect as of the date on which such representation or warranty is made by Borrower;

- (2) If Borrower fails to comply with or breaches any of the terms, covenants and conditions in the Loan Documents;
- (3) Borrower fails to repay the Loan as required by subsection I. H.
- (4) Borrower is adjudged a bankrupt, files a petition in bankruptcy or has a petition in bankruptcy filed against it, or makes an assignment for the benefit of its creditors.

B. Remedies Upon Default. Upon any Event of Default as specified in subsection A., Metro shall give written notice thereof to Borrower, by hand delivery or U.S. mail, addressed to Borrower's address as stated in this Agreement, or to such other address as may subsequently, upon written notice thereof to Metro, be designated by Borrower. If such violation is not corrected to the reasonable satisfaction of Metro within thirty (30) days after the date such notice is mailed, or within such further time as Metro reasonably determines in its reasonable discretion is necessary to correct the violation, without further notice Metro may declare a default under this Agreement and under the Loan Documents evidencing and securing the Loan and may proceed to initiate any or all remedies at law or in equity available in the event of a default, including, but not limited to, the acceleration of the due date of the entire Loan indebtedness, and exercising its rights under the Guaranty.

All of the rights and remedies of Metro shall be cumulative to the fullest extent permitted by law and shall be in addition to all those rights and remedies afforded Metro at law or equity or in bankruptcy.

V. MISCELLANEOUS PROVISIONS.

The following conditions and provisions shall be applicable throughout the term of the Loan:

A. Binding Effect. This Agreement shall be binding upon the parties, their heirs, personal representatives, successors and assigns.

B. Notices. All notices hereunder shall be in writing delivered or mailed by certified mail, return receipt requested to the addresses indicated in this Agreement or such other address as may be designated by the parties in writing.

C. Amendments to be in Writing. No Loan Document may be changed, waived, discharged or terminated except by an instrument in writing signed by the parties hereto.

D. Severability. If any provision of this Agreement or any Loan Document shall be determined to be invalid, void or unenforceable, said determination shall not affect the validity or enforceability of any other valid provision of this Agreement.

E. Jurisdiction. Borrower hereby consents to the jurisdiction of the state courts in the Commonwealth of Kentucky for all disputes relating to the construction, interpretation, enforcement and performance of the Loan Documents, hereby waiving all defenses based on jurisdiction, venue, or convenience of forum.

F. Survival of Covenants, Agreements, Warranties and Representations. All covenants, agreements, warranties and representations made by Borrower herein shall survive Closing and each advance thereof hereunder and the execution and delivery of the Loan Documents, and shall be deemed to be continuing covenants, agreements, representations and warranties at all times while any portion of the Loan remains unpaid, and such covenants, agreements, representations and warranties shall be deemed to be remade and restated by Borrower each time Borrower requests an advance hereunder.

G. Interpretation. No course of dealing in respect of, nor any omission or delay in the exercise of, any right, power, remedy or privilege by Metro shall operate as a waiver thereof, nor shall any right, power, remedy or privilege of Metro be exclusive of any other right, power, remedy or privilege referred to herein or in any related document now or hereafter available at law, in equity, in bankruptcy, by statute or otherwise. Each such right, power, remedy or privilege may be exercised by Metro, either independently or concurrently with others and as often and in such order as Metro may deem expedient. No waiver or consent granted by Metro or Borrower, as applicable, in respect to or any Loan Document or related writing shall be binding upon Metro or Borrower, as applicable, unless specifically in writing by duly authorized officers of Metro or the duly authorized officer of Borrower, as applicable, which writing shall be strictly construed. The parties agree that the Loan Documents shall be so interpreted to give effect and validity to all the provisions hereof to the fullest extent permitted by law.

H. Assignment. Borrower may not assign any of its rights or obligations under this Loan Agreement to any other party without the prior written consent of Metro, and such consent shall not be unreasonably withheld.

I. Time of Essence. Time shall be of the essence in the performance of all of Metro's and Borrower's obligations under the Loan Documents and the instruments related hereto or thereto.

J. No Third Party Beneficiaries. All conditions of the obligations of Metro to make advances hereunder are imposed solely and exclusively for the benefit of Metro and its assigns and Borrower and its assigns, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Metro will not refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances be deemed to

be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Metro at any time if in their sole discretion they deems it advisable to do so.

K. Maintenance and Inspection of Financial Records. Borrower shall maintain full and complete records in accordance with Generally Accepted Accounting Principles of all expenditures made from the proceeds of the Loan and shall maintain such records for a period of five years from the date of the Loan in accordance with Metro Ordinance No. 183, Series 2009. If requested by Metro all such records shall be made available, without limitation, to the auditor of Metro or any other person designated by Metro at a location in Louisville Metro.

WITNESS the signatures of the authorized representatives of Metro and Borrower as of the date first written above.

METRO:

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT
ECONOMIC DEVELOPMENT DEPARTMENT**

By: _____

Title: _____

BORROWER:

**HERTZ INVESTMENT GROUP, LLC, as
property manager for
HERTZ STARKS BUILDING, LLC**

By: _____

Title: _____

Approved as to Form:
